

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Jessica Yeager, Senior Scientist
Potesta & Associates, Inc.
7012 MacCorkle Ave.
Charleston, West Virginia 25304

JUL 24 2017

Michael Callaghan, Esquire
Neely & Callaghan
159 Summers Street
Charleston, West Virginia 25301

Re: Dam Characterization and Removal Plan of Dams 11 through 20

Dear Ms. Yeager:

On October 11, 2016, pursuant to Paragraph 24 of the Consent Decree entered in *United States, et al. v. James C. Justice Companies, et al.*, Civ. Action No. 1:15-cv-16018, the U.S. Environmental Protection Agency Region III (EPA), in consultation with the West Virginia Department of Environmental Protection, provided comment on the above-referenced plan. To date, no response to EPA's comments has been received. As a follow-up, representatives of EPA and the U.S. Army Corps of Engineers visited the dams on February 28, 2017. Unfortunately, however, we are not aware of any further progress by Potesta on restoration- and mitigation-related work following the February 28 site visit.

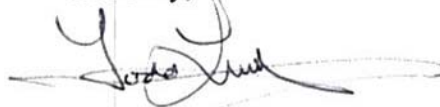
EPA observed that at least 16 of the 20 structures have partially failed, resulting in further sedimentation, loss of stream channel, adverse impacts to the biotic community, and the potential for instream temperature change. Based on its observations, EPA believes that the goals of the restoration as described in Paragraph 23 of the Consent Decree can be accomplished in a relatively straightforward manner, consisting of removal of the dam structures, accompanied by stabilization of the original stream channel and floodplain through planting of native West Virginia seed mixture. In addition, as provided in Paragraph 23 of the Consent Decree, any restoration plan should include quantitative performance standards, a 10-year monitoring period, and compensation for impacts to streams and wetlands using the West Virginia Stream and Wetland Valuation Metric ("WVSWVM") to determine the appropriate amount of mitigation needed to offset permanent and temporal losses to aquatic resources. Such compensatory mitigation can consist of on-site enhancement or off-site mitigation.

Consistent with the foregoing, we offer the following revised comments on the above-referenced plan:

- The plan should include removal of all dams (1-20) no later than September 15, 2017 to take advantage of generally lower flow conditions.
- EPA generally concurs that wetlands located along the channel should be identified and avoided during construction.
- While EPA does not object to use of the pre-existing ford crossing at Dam 15 during construction to access the channel, please provide information regarding whether you plan to enhance, modify or remove that structure at the end of the process.
- The plan should include quantitative performance standards. Post-construction benthic macroinvertebrate and fish monitoring should be included and incorporated into restoration and mitigation performance standards.
- A list of vegetative species to be used for riparian areas and stabilization measures should be included.
- The one year monitoring period provided in the plan to determine if further stream restoration techniques are required for stabilization of each dam removal reach is insufficient. Paragraph 23 of the Consent Decree calls for a 10-year monitoring plan. Performance standards should be achieved in at least two consecutive years.

Response to EPA's October 11, 2016 comments is far past the period described in Paragraph 25 of the Consent Decree. Accordingly, we expect a response to these comments no later than 21 days to allow work to be completed by September 15, 2017. If you have any questions, please contact Stefania D. Shamet of our Office of Regional Counsel at (215) 814-2682 or representatives of Potesta can call me directly at (215) 814-2099.

Sincerely,



Todd Lutte
Enforcement Coordinator
Office of Environmental Programs
Environmental Assessment and
Innovation Division

From: Almeter, Katelyn <Almeter.Katelyn@epa.gov>
To: Bandy, Jeremy W; Porter, Susan A CIV USARMY CELRH (US); Saylor, Austin (ENRD)
CC: Shamet, Stefania; Raack, Melissa
Sent: 3/12/2018 3:46:42 PM
Subject: FW: James C. Justice Companies, et al., Civil Action No. 1:15-cv-16018 (S.D.W.Va.)
Attachments: 12March2018TurkeyCreek.pdf

FYI – The letter for Turkey Creek was signed today. We are sending a hardcopy but wanted to provide an electronic version too.

Thanks!
Katelyn

From: Almeter, Katelyn
Sent: Monday, March 12, 2018 3:39 PM
To: 'mcallaghan@neelycallaghan.com' <mcallaghan@neelycallaghan.com>
Cc: Shamet, Stefania <Shamet.Stefania@epa.gov>; Forren, John <Forren.John@epa.gov>; Lutte, Todd <Lutte.Todd@epa.gov>
Subject: James C. Justice Companies, et al., Civil Action No. 1:15-cv-16018 (S.D.W.Va.)

Good afternoon,

Please see EPA's letter attached regarding Civil Action No. 1:15-cv-16018 (S.D. W.Va.) for the Turkey Creek site. Hardcopy to follow in the mail.

Take care,
Katelyn Almeter

Katelyn Almeter
Environmental Protection Agency - Region III
Environmental Assessment and Innovation Division
Office of Environmental Programs
1650 Arch Street (3EA30)
Philadelphia, PA 19103
215-814-2797

From: Shamet, Stefania <Shamet.Stefania@epa.gov>
To: Raack, Melissa; Saylor, Austin (ENRD)
Sent: 2/15/2017 8:29:26 PM
Subject: Fw: Turkey Creek

Looks like the site visit is a "go"

From: Lutte, Todd
Sent: Wednesday, February 15, 2017 4:24 PM
To: Jessica L. Yeager
Cc: Almeter, Katelyn; Shamet, Stefania
Subject: RE: Turkey Creek

We were thinking morning Maybe 9am if that gives folks enough time to travel

Todd Lutte
Wetlands Enforcement Team Leader
U.S. EPA Region III
1650 Arch Street (3EA30)
Philadelphia, PA 19103
215-814-2099
lutte.todd@epa.gov

From: Jessica L. Yeager [mailto:JLYeager@potesta.com]
Sent: Wednesday, February 15, 2017 1:47 PM
To: Lutte, Todd <Lutte.Todd@epa.gov>
Subject: RE: Turkey Creek

Todd –

We got a note from Bob Cochran which indicates that we will be heading to Turkey Creek.

Do you have a time in mind yet?

Jessica

Jessica L. Yeager, M.S.
Senior Scientist II
7012 MacCorkle Avenue, S.E.
Charleston, West Virginia 25304
Office - (304) 342-1400
Fax - (304) 343-9031
Cellular - (304) 545-6602
jlyeager@potesta.com

This electronic communication and its attachments contain confidential information. The recommendations and/or design data included herein are provided as a matter of convenience and

should not be used for final design or ultimate decision making. Rely only on the final hard copy materials bearing the consultant's original signature and seal. If you have received this information in error, please notify the sender immediately.

If you can't fly then run, if you can't run then walk, if you can't walk then crawl, but whatever you do you have to keep moving forward – MLK Jr.

From: Lutte, Todd [<mailto:Lutte.Todd@epa.gov>]
Sent: Wednesday, February 15, 2017 10:37 AM
To: Jessica L. Yeager
Subject: Turkey Creek

Hi Jessica

I left you a message earlier this week to see if you have been compensated on Turkey Creek?

We are accessing the site on February 28th to document the current state of the impoundments.

We hope you could join us if you are available!

Todd Lutte
Wetlands Enforcement Team Leader
U.S. EPA Region III
1650 Arch Street (3EA30)
Philadelphia, PA 19103
215-814-2099
lutte.todd@epa.gov

From: Shamet, Stefania <Shamet.Stefania@epa.gov>
To: Bandy, Jeremy W; Driver, Charles S; Gibbs Kinderman; Raack, Melissa; Saylor, Austin (ENRD)
Sent: 3/21/2016 9:35:20 PM
Subject: Re: FW: James C. Justice, II and James C. Justice Companies, Inc., and High Mountain Living, LLC Clean Water Act Settlement

Mr. Kinderman:

Your calculation of the dates from entry of the Consent Decree appears correct. You are correct as to payment of civil penalty, except that the documentation I have confirming High Mountain Living, LLC's payment includes a cover letter dated March 1, 2016.

Respectfully,

Stefania D. Shamet
Senior Assistant Regional Counsel
USEPA Region III

From: Gibbs Kinderman <gibbskinderman@gmail.com>
Sent: Monday, March 21, 2016 6:18 PM
To: Driver, Charles S; Shamet, Stefania; Raack, Melissa; Saylor, Austin (ENRD); Bandy, Jeremy W
Subject: Re: FW: James C. Justice, II and James C. Justice Companies, Inc., and High Mountain Living, LLC Clean Water Act Settlement

So am I correct in understanding that the restoration plan is due by 6/24/16, and the financial payment by 3/26/16?

"Mr. Justice and the Justice Companies will pay a \$220,000 civil penalty. High Mountain Living LLC settled with EPA for the same Clean Water Act violations and will pay a \$125,000 civil penalty. As a co-plaintiff, the state of West Virginia will receive half of these penalties."

Am I correct that High Mountain Living LLC has paid its penalty as of March 2, 2016?

Thank you,

Gibbs Kinderman

On Mon, Mar 21, 2016 at 7:43 AM, Driver, Charles S <Charles.S.Driver@wv.gov> wrote:
Mr. Kinderman, I apologize for the delay in getting back to you. After inquiry with our folks and with EPA, I got the same answers that are reflected in Stefania's e-mail. Thank you for your patience.

Scott

From: Shamet, Stefania [<mailto:Shamet.Stefania@epa.gov>]
Sent: Friday, March 18, 2016 12:37 PM
To: Gibbs Kinderman <gibbskinderman@gmail.com>; Raack, Melissa <Raack.Melissa@epa.gov>

Cc: Saylor, Austin (ENRD) <Austin.Saylor@usdoj.gov>; Bandy, Jeremy W <Jeremy.W.Bandy@wv.gov>

Subject: RE: James C. Justice, II and James C. Justice Companies, Inc., and High Mountain Living, LLC Clean Water Act Settlement

Mr. Kinderman:

Thank you for your email. I believe your email reflects a misunderstanding regarding the timing of actions under the Consent Decree. While the Consent Decree was lodged with the Court in December 2015, the deadlines for payment of the penalty and submission of a restoration plan run from the date of entry of the Consent Decree by the court. The Consent Decree was entered by the Court on February 25, 2016, following conclusion of a public comment period. Accordingly, the deadlines for payment of penalty and submission of the restoration plan have not yet passed.

Section 309(c) of the Clean Water Act, 33 U.S.C. 1319(c) addresses criminal violations of the Clean Water Act. Your email is correct that the Consent Decree is a civil consent decree.

Thank you for your interest in this matter. Please feel free to contact me if you have additional questions.

Stef

Stefania D. Shamet
Senior Assistant Regional Counsel
USEPA Region III

From: Gibbs Kinderman [<mailto:gibbskinderman@gmail.com>]

Sent: Thursday, March 17, 2016 5:01 PM

To: Shamet, Stefania <Shamet.Stefania@epa.gov>; Raack, Melissa <Raack.Melissa@epa.gov>

Subject: James C. Justice, II and James C. Justice Companies, Inc., and High Mountain Living, LLC Clean Water Act Settlement

Ladies -

I am writing to enquire about the progress toward implementation of ther civil settlement in this case. Here are a few questions:

- 1) As I understand it, the deadline has passed by which Mr. Justice was to have filed his restoration plan. Is this correct? if so, Has the plan been filed?
- 2) The civil penalties were have to be paid in 30 days. Were they paid in a timely manner?
- 3) Are there any provisions for possible criminal penalties in the law under which this civil consent decree was arrived at?

My phone number is 304-772-5888. I would very much appreciate the chance to speak with you or to hear from you by e-mail.

Gibbs Kinderman

From: Shamet, Stefania <Shamet.Stefania@epa.gov>
To: Bandy, Jeremy W; Driver, Charles S; Gibbs Kinderman; Raack, Melissa; Saylor, Austin (ENRD)
Sent: 3/28/2016 7:56:26 AM
Subject: Re: FW: James C. Justice, II and James C. Justice Companies, Inc., and High Mountain Living, LLC Clean Water Act Settlement

Mr. Kinderman:

The United States received confirmation of payment of penalty from the Justice entities on Friday, March 25, 2016.

Sincerely,

Stefania D. Shamet
Senior Assistant Regional Counsel
USEPA Region III

From: Shamet, Stefania
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Ladies -

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To: Saylor, Austin (ENRD); Shamet, Stefania; Raack, Melissa
CC: Lapp, Jeffrey; Almeter, Katelyn; Porter, Susan A; Richter, Audrey M CIV USARMY CELRH (US)
Sent: 7/24/2017 1:58:06 PM
Subject: Turkey Creek Dam Removal Characterization
Attachments: TurkeyCreekDamRemoval2017-07-24-050424.pdf

Folks
Attached you will find an electronic copy of the Turkey Creek Dam Characterization response letter
Electronic copies were sent out to Potesta and Callaghan this morning and the hard copies are in the mail
Let me know if you have any questions
Thank you all

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Jessica Yeager, Senior Scientist
Potesta & Associates, Inc.
7012 MacCorkle Ave.
Charleston, West Virginia 25304

JUL 24 2017

Michael Callaghan, Esquire
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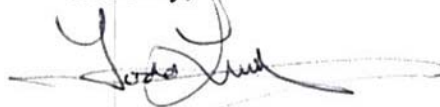
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Sincerely,



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Office of Environmental Programs
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